

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

PHILIP W. McCLURE,

Petitioner,

v.

No. 1:11-cv-00695-PK

OPINION AND ORDER

JEFF PREMO,

Respondent.

MOSMAN, J.,

On March 21, 2013, Magistrate Judge Papak issued his Findings and Recommendation (“F&R”) [47] in the above-captioned case, recommending that I deny the Petition for Writ of Habeas Corpus [2], that I decline to issue a certificate of appealability, and that I enter a judgment dismissing this case with prejudice. Petitioner filed objections [54], and respondent filed a response [55].

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court

is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Papak's recommendation, and I ADOPT the F&R [47] as my own opinion. I deny petitioner's request for a certificate of appealability because he has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 28th day of June, 2013.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Judge